

ZUCKERT SCOUTT & RASENBERGER, L.L.P.

ATTORNEYS AT LAW

888 Seventeenth Street, NW, Washington, DC 20006-3309
Telephone [202] 298-8660 Fax [202] 342-0683
www.zsrlaw.com

2004/27



SCOTT M. ZIMMERMAN

November 17, 2000

BY HAND

Office of the Secretary
Surface Transportation Board
Case Control Unit
(Attn: STB Ex Parte No. 582 (Sub-No. 1))
1925 K Street, NW
Washington, D.C. 20423-0001

Re: Ex Parte No. 582 (Sub-No. 1) Major Rail Consolidation Procedures

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding are the original and 25 copies of the Comments of the Texas Mexican Railway Company. Also enclosed is a computer disk containing the text of this pleading in WordPerfect 5.1 format.

Please date-stamp the three additional enclosed copies and return them with our messenger.

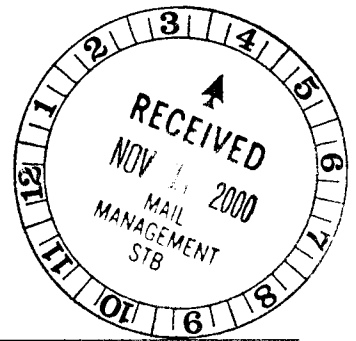
Sincerely,

Scott M. Zimmerman

Enclosures

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Office of the Secretary
NOV 17 2000
Part of
Public Record

Before the
SURFACE TRANSPORTATION BOARD



Ex Parte No. 582 (Sub-No. 1)

MAJOR RAIL CONSOLIDATION PROCEDURES

COMMENTS OF THE TEXAS MEXICAN RAILWAY COMPANY

Richard A. Allen
Scott M. Zimmerman
ZUCKERT, SCOUTT & RASENBERGER, LLP
888 Seventeenth Street, N.W.
Suite 600
Washington, DC 20006-3309
(202) 298-8660

*Attorneys for the Texas Mexican
Railway Company*

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Ex Parte No. 582 (Sub-No. 1)
MAJOR RAIL CONSOLIDATION PROCEDURES

COMMENTS OF THE TEXAS MEXICAN RAILWAY COMPANY

The Texas Mexican Railway Company ("Tex Mex") submits the following comments on the Board's Notice of Proposed Rulemaking, served October 3, 2000, in this proceeding.

Tex Mex is a Class II railroad that owns and operates over a 157-mile line between Corpus Christi and Laredo, Texas, the major railroad gateway between the United States and Mexico, and also operates over some 400 miles of trackage rights in Texas from Corpus Christi to Houston and Beaumont. Tex Mex connects at Beaumont with the Kansas City Southern Railway (KCS) and at Laredo with Transportacion Ferroviaria Mexicana, S.A. de C.V. (TFM), a Mexican railroad whose shares are owned by a Mexican transportation company, Transportacion Maritima Mexicana (TMM), Kansas City Southern Industries (KCSI), the owner of KCS, and the

Mexican government. TFM operates Mexico's Northeast rail concession, which links Laredo with Mexico City and major industrial centers throughout Mexico.¹

For most of its long history, Tex Mex has been Mexican-owned. The Mexican government itself owned the railroad from 1916 until 1982, when it sold Tex Mex to TMM. In 1995, TMM sold a 49 percent stake in Tex Mex to KCSI; TMM retained a 51 percent share, which it continues to hold today.²

Tex Mex filed comments and reply comments on the Advanced Notice of Proposed Rulemaking served March 31, 2000. Those comments urged the Board not to adopt any changes to its rail merger rules and policies that would, contrary to longstanding Congressional policy, have the effect of placing restrictions on the ownership of interests in railroads operating in the United States based on citizenship or nationality, or would place special burdens on rail consolidation transactions that involve non-U.S. railroads or parties. Tex Mex noted in its comments that the jurisdiction of the Board is limited to rail transportation in the United States and pointed out that the Board has no basis for examining, or requiring evidence about, the effects of a rail transaction – whether operational, environmental, safety, competitive or otherwise – outside the borders of the United States.

With respect to specific cross-border issues on which Tex Mex previously commented, the NPRM has largely, but not completely, dispelled Tex Mex's concerns. The NPRM makes

¹ Prior to 1997, the Mexican government owned the Mexican railway system, known as Ferrocarriles Nacionales de Mexico (FNM). In 1997, the government privatized the Northeast region, the first of four regions of the FNM system to be privatized. TFM won the concession to operate the Northeast region and began operating it in 1997.

² TMM and KCSI own 51 percent and 49 percent, respectively, of Mexrail, Inc., a Delaware corporation that owns 100 percent of the shares of Tex Mex. Mexrail, Inc. also owns the U.S. half of the International Railroad Bridge between Laredo and Nuevo Laredo.

clear that Board recognizes the limits of its jurisdiction and properly intends to focus on the effects in the United States of major transactions involving non-U.S. railroads. Thus, proposed § 1180.1(k) proposes to require information in cross-border cases “from which we can determine the competitive, service, employee, safety, and environmental impacts of the prospective operations *within the United States*.” (Emphasis supplied.) Given that appropriate focus, however, it is not clear what the proposed rules mean by “ ‘full system’ competitive analyses and operating plans.” Would a major transaction involving a Canadian railroad require operating plans detailing train schedules between Canadian cities? Would it require an analysis of the competitive effects on rail or other transportation in Canada, or on essential services provided by other Canadian railroads? If so, it is not clear why such analyses would be relevant to the issues before the Board, or how the Board’s review of those issues would avoid encroaching on the proper jurisdiction of Canadian agencies.

Similarly, the information that would be required by subsections (b) and (c) of proposed § 1180.11 appears to be based on an unwarranted presumption that major transactions involving non-U.S. railroads would have some adverse effect on the commercial or national defense interests of the United States. In adopting any final rules, the Board should clearly disclaim any such presumption.

Beyond the specific concerns about cross border issues that prompted Tex Mex’s earlier comments, the NPRM, obviously, proposes to make some very significant changes in the way the Board evaluates and processes transactions deemed to be major transactions. Although Tex Mex, as a Class II carrier, is not likely to be directly involved in transactions to which the changes, if adopted, will apply, Tex Mex has a vital interest in the state of the rail industry generally – in its financial health and viability, its competitiveness with other transportation

modes, the degree of competition among railroads, the quality of rail service, and the relations between Class I railroads and smaller railroads. These are all issues that the Board's rules and policies governing major transactions will substantially affect.

Tex Mex will not at this time comment on most of the issues presented by those broader proposed changes, confident that the Board will have ample assistance from the comments of other parties in evaluating those issues. Tex Mex, however, does wish to comment on one procedural issue: the time frames proposed for processing major transactions. Proposed § 1180.4(e) proposes time frames that track the maximum periods currently permitted by 49 U.S.C. § 11325. Tex Mex agrees with the Burlington Northern Santa Fe Railroad that the rules should provide for shorter time frames for major transactions. Although the Board could provide for longer periods if particular applications appeared to warrant it, the presumption should be for shorter periods. That is so because Board proceedings involving major transactions are not only expensive and burdensome for all concerned, but, more importantly, they create great uncertainty throughout the entire transportation community, which is disruptive and harmful to the economy. If, as the NPRM indicates, the proposed rules will significantly "raise the bar" for future major transactions, transactions that do not pass muster should be denied as quickly as possible. The Department of Justice and Federal Trade Commission typically review proposed consolidations outside the railroad industry, which often dwarf the largest rail mergers, far more quickly than what the NPRM proposes. We therefore agree with

BNSF that the presumption should be that evidentiary proceedings in major transactions should be completed in 180 days from the filing of applications.

Respectfully submitted,

Handwritten signature of Richard A. Allen and Scott M. Zimmerman, with the initials "SMZ" written at the end.

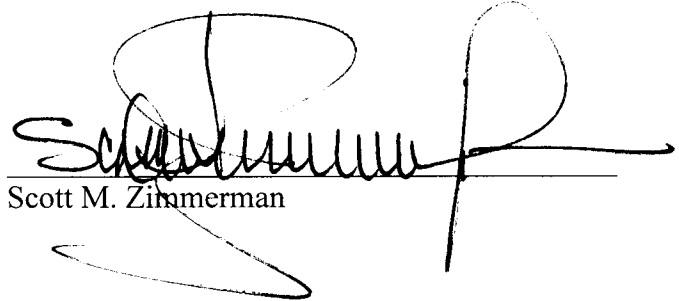
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November 17, 2000

*Attorneys for the Texas Mexican
Railway Company*

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of November, 2000, a copy of the foregoing
Comments of the Texas Mexican Railway Company was served on all the parties of record in
this docket by first class U.S. mail or more expedited delivery.



Scott M. Zimmerman